

March 24, 1937

Mr. Frank E. Fraser, Director
Sales Tax Division
Arizona State Tax Commission
State House
Phoenix, Arizona

Dear Mr. Fraser:

I have before me your letter of March 20th, requesting an opinion from this office on the following; (1) whether a one per cent sales tax may properly be imposed upon the sale of a neon sign by the manufacturer of such neon sign to the distributor or retailer; (2) whether a two per cent sales tax may properly be imposed upon the income received from the sale of a neon sign by the distributor or retailer to the final consumer.

We have examined the Excise Revenue Act of 1935 and have come to the conclusion that the answer to both questions must be in the affirmative. We believe that Section 2, sub-section (2), paragraph 1, covers the first proposition:

"At an amount equal to one per cent of the gross proceeds of sales or gross income from the business upon every person engaged or continuing within this state in the following businesses: 1. Manufacturing, baling, crating, boxing, barrelling, canning, bottling, sacking or preparing for sale, profit or commercial use, agriculture and horticultural products, including livestock prepared for sale, or commercial use, and any product or products, article or articles, substance or substances, commodity or commodities not included within paragraph 1, subdivision (c) of this section." (Emphasis ours.)

It is clear that the construction and building of a neon sign can be properly classed as a manufacture.

We believe that the following Section of the Act covers the second proposition, Section 2, Sub-section (a) paragraph 2, reads as follows:

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"2. Any product, article, substance or commodity included in sub-section a-1 which shall be sold at retail, or to the ultimate consumer or user by any person classified in such sub-section shall be deemed to be a sale at retail of tangible property within the meaning of sub-section (d) and the gross proceeds from sale of such product, article, substance or commodity so sold at retail shall be exempt from the provisions of sub-section a-1 and shall be subject to the provisions of subdivision (d)".

Section 2, sub-section (d) paragraph 1 reads as follows:

"(d) At an amount equal to two per cent of the gross proceeds of sales or gross income from the business upon every person engaging or continuing within this state in the following businesses: 1. Selling any tangible personal property whatsoever at retail, except bonds and stock".

From an examination of the act it appears that the sections cited are the only ones applicable to the transactions described. It may be contended that article 8 of sub-section (c) of section 2, is applicable. This section reads:

"at an amount equal to 1 per cent of the gross proceeds of sale or the gross income from the business upon every person engaging or continuing within this state in the following businesses: job printing, engraving, embossing and copying, advertising by bill boards, direct mail, radio or by ^{any} means calculated to appeal to prospective purchasers".

We do not believe that this section applies for the following reasons: In the instant case we have an actual sale of tangible personal property and a mere reading of the above section suggests that in selecting the businesses contained therein the legislature had in mind occupations through which runs a common thread or purpose, businesses which dealt in services more than in actual sales of commodities such as advertising by bill boards or advertising by direct mail or radio.

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It may be contended that the clause "or by any means calculated to appeal to prospective purchasers" covers the sale of a Neon sign. However, we believe that in accordance with the rule of ejusdem generis, such terms as "others", "other thing", "others" or "any other", when preceded by a specific enumeration are commonly given a restricted meaning and limited to articles of the same nature as those previously described.

Yours very truly,

JOE CONWAY
Attorney General

W. E. POLLEY
Assistant Attorney General

E. G. FRAZIER
Special Assistant
Attorney General